

Senate Bill No. 1268

Passed the Senate August 25, 2010

Secretary of the Senate

Passed the Assembly August 23, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 8 (commencing with Section 31490) to Division 17 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1268, Simitian. Toll bridges, lanes, and highways: electronic toll collection mechanisms: disclosure of personal information.

Existing law authorizes development and implementation of various electronic bridge and highway toll collection mechanisms.

This bill would prohibit a transportation agency, as defined, from selling or providing personally identifiable information of a person obtained pursuant to the person's participation in an electronic toll collection system or use of a toll facility that uses an electric toll collection system, subject to specified exceptions. The bill would require a transportation agency that uses an electric toll collection system to establish a privacy policy regarding personally identifiable information in that regard and to provide the policy to subscribers and post the policy on its Internet Web site. The bill would allow a transportation agency to store certain personally identifiable information of a person and would, on and after July 1, 2011, require it to discard other information within a designated time period. The bill would prescribe the circumstances in which a transportation agency may make personally identifiable information available to a law enforcement agency. The bill would authorize a person whose personally identifiable information has been sold or provided in violation of the bill to bring specified actions for recovery of damages, costs, and attorney's fees. The bill would authorize a transportation agency to impose an administrative fee to implement these provisions, as specified. By imposing new duties on local transportation agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Chapter 8 (commencing with Section 31490) is added to Division 17 of the Streets and Highways Code, to read:

CHAPTER 8. ELECTRONIC TOLL COLLECTION SYSTEMS

31490. (a) Except as otherwise provided in this section, a transportation agency may not sell or otherwise provide to any other person or entity personally identifiable information of any person who subscribes to an electronic toll collection system or who uses a toll bridge, toll lane, or toll highway that employs an electronic toll collection system.

(b) A transportation agency that employs an electronic toll collection system shall establish a privacy policy regarding the collection and use of personally identifiable information and provide to subscribers of that system a copy of the privacy policy in a manner that is conspicuous and meaningful, such as by providing a copy to the subscriber with the transponder or other device used as an electronic toll collection mechanism, or, if the system does not use a mechanism, with the application materials. A transportation agency shall conspicuously post its privacy policy on its Internet Web site. For purposes of this subdivision, “conspicuously post” has the same meaning as that term is defined in paragraphs (1) to (4), inclusive, of subdivision (b) of Section 22577 of the Business and Professions Code. The policy shall include, but need not be limited to, a description of the following:

- (1) The types of personally identifiable information that is collected by the agency.
- (2) The categories of third-party persons or entities with whom the agency may share personally identifiable information.
- (3) The process by which a transportation agency notifies subscribers of material changes to its privacy policy.
- (4) The effective date of the privacy policy.
- (5) The process by which a subscriber may review and request changes to any of his or her personally identifiable information.

(c) A transportation agency may, within practical business and cost constraints, store only personally identifiable information of a person such as the account name, credit card number, billing address, vehicle information, and other basic account information required to perform account functions such as billing, account settlement, or enforcement activities. All other information, on and after July 1, 2011, shall be discarded no more than four years and six months after the closure date of the billing cycle and the bill has been paid and all toll violations, if applicable, have been resolved.

(d) On and after July 1, 2011, a transportation agency shall take every effort, within practical business and cost constraints, to purge the personal account information of an account that is closed or terminated. In no case shall a transportation agency maintain personal information more than four years and six months after the date an account is closed or terminated.

(e) (1) A transportation agency may make personally identifiable information of a person available to a law enforcement agency only pursuant to a search warrant. Absent a provision in the search warrant to the contrary, the law enforcement agency shall immediately, but in any event within no more than five days, notify the person that his or her records have been obtained and shall provide the person with a copy of the search warrant and the identity of the law enforcement agency or peace officer to whom the records were provided.

(2) This section does not prohibit a peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, when conducting a criminal or traffic collision investigation, from obtaining personally identifiable information of a person if the officer has good cause to believe that a delay in obtaining this information by seeking a search warrant would cause an adverse result, as defined in paragraph (2) of subdivision (a) of Section 1524.2 of the Penal Code.

(f) This section does not prohibit a transportation agency in subdivision (a) from providing aggregated traveler information derived from collective data that relates to a group or category of persons from which personally identifiable information has been removed.

(g) This section does not prohibit a transportation agency from providing the license plate number of an intermodal chassis to the

owner of the chassis for purposes of locating the driver of the chassis in the event the driver fails to pay the toll.

(h) This section does not prohibit a transportation agency from sharing data with another transportation agency solely to comply with interoperability specifications and standards adopted pursuant to Section 27565 regarding electronic toll collection devices and technologies. A third-party vendor may not use personally identifiable information obtained under this subdivision for a purpose other than described in this subdivision.

(i) Subdivision (d) shall not prohibit a transportation agency, or its designee, from performing financial and accounting functions such as billing, account settlement, enforcement, or other financial activities required to operate and manage the toll facilities.

(j) This section does not prohibit a transportation agency from communicating about products and services offered by itself, a business partner, or the agency with which it contracts to subscribers of the transportation agency through a contracted third-party vendor using personally identifiable information limited to the subscriber's name, address, and electronic mail address, provided that, for customer agreements entered into on or after January 1, 2011, the transportation agency has received the subscriber's express written consent to receive the communications.

(k) A transportation agency may not use a nonsubscriber's personally identifiable information obtained using an electronic toll collection system to market products or services to that nonsubscriber. This subdivision shall not apply to toll-related products or services contained in a notice of toll evasion issued pursuant to Section 23302 of the Vehicle Code.

(l) For purposes of this section, "transportation agency" means the Department of Transportation, the Bay Area Toll Authority, any entity operating a toll bridge, toll lane, or toll highway within the state, or any entity under contract with any of the above entities.

(m) For purposes of this section, "electronic toll collection system" is a system where a transponder, camera-based vehicle identification system, or other electronic medium is used to deduct payment of a toll from a subscriber's account or to establish an obligation to pay a toll.

(n) For purposes of this section, "person" means any person who subscribes to an electronic toll collection system or any person

who uses a toll bridge, toll lane, or toll road that employs an electronic toll collection system.

(o) For purposes of this section, “personally identifiable information” means any information that identifies or describes a person including, but not limited to, travel pattern data, address, telephone number, e-mail address, license plate number, photograph, bank account information, or credit card number.

(p) (1) In addition to any other remedies provided by law, a person whose personally identifiable information has been knowingly sold or otherwise provided in violation of this section may bring an action to recover either actual damages or two thousand five hundred dollars (\$2,500) for each individual violation, whichever is greater, and may also recover reasonable costs and attorney’s fees.

(2) A person whose personally identifiable information has been knowingly sold or otherwise provided three or more times in violation of this section may bring an action to recover either actual damages or four thousand dollars (\$4,000) for each individual violation, whichever is greater, and may also recover reasonable costs and attorney’s fees.

(q) Nothing in subdivisions (c) and (d) shall preclude compliance with a court order or settlement agreement that has been approved on or before April 25, 2010.

(r) A transportation agency that employs an electronic toll collection system may impose an administrative fee on persons who use that system in an amount sufficient to cover the cost of implementing this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Approved _____, 2010

Governor